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Comprehensive review of the whole question of peacekeeping operations in all their aspects

Making the standards contained in the Secretary-General's bulletin binding on contingent members and standardizing the norms of conduct so that they are applicable to all categories of peacekeeping personnel

Note by the Secretary-General

Pursuant to General Assembly resolution 59/300, in which the Assembly endorsed the proposals, recommendations and conclusions contained in the report of the Special Committee on Peacekeeping Operations on its 2005 resumed session (A/59/19/Rev.1, part two, chap. II, paras. 40 (b) and (c)), the Secretary-General has the honour to transmit herewith the report of the Group of Legal Experts on how the standards contained in the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) could bind contingent members in the period prior to the conclusion of a memorandum of understanding or other agreement or action by a troop-contributing country that incorporates those standards in a legally effective way under its national laws; and study and propose ways of standardizing the norms of conduct applicable to all categories of peacekeeping personnel, paying particular attention to sexual exploitation and abuse. The Special Committee on Peacekeeping Operations also requested (A/59/19/Rev.1, part two, chap. II, para. 40 (a)), that the Group of Legal Experts make recommendations to ensure that United Nations staff and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized, in accordance with due process. To that end, a first group of experts constituted and submitted a report to the Secretary-General in March 2006 (A/60/980).

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Report of the Group of Legal Experts on making the standards contained in the Secretary-General's bulletin binding on contingent members and standardizing the norms of conduct so that they are applicable to all categories of peacekeeping personnel

Summary

Following the consideration of the report entitled "A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations", completed by His Royal Highness Prince Zeid Ra'ad Zeid Al-Hussein, Permanent Representative of Jordan to the United Nations (A/59/710), the Special Committee on Peacekeeping Operations recommended the appointment of a group of legal experts to consider the problem of holding experts on mission and other civilians accountable for crimes they commit on peacekeeping missions. The report from that first Group (A/60/980) is now under consideration by the United Nations.

The Special Committee also requested that a group of legal experts be appointed to consider two additional issues: the application of the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) to members of military contingents before the memorandum of understanding or similar document is signed, and standardizing norms of conduct across all categories of peacekeeping personnel.

The second Group reviewed the processes that the United Nations undertakes to generate a force for a peacekeeping operation. From that review, it identified a number of ways by which a troop-contributing country could be placed under an obligation at international law to ensure that the standards in the Secretary-General's bulletin bind contingent members in the period prior to the conclusion of a memorandum of understanding or similar document. A number of recommendations are made in that regard.

The Group also considered the authority of the head of mission and Force Commander to issue directives, and the role of troop-contributing countries to take action to ensure that the Secretary-General's bulletin is binding on its members. Recommendations are also made in relation to that issue.

The concept of standardizing norms of conduct for all categories of peacekeeping personnel raised a number of problems for the Group. While the Group concluded that there is merit in ensuring that the same norms of conduct apply to all categories of peacekeeping personnel in relation to issues that are of significance to the United Nations, such as sexual exploitation and abuse, there is considerable practical difficulty in standardizing norms of conduct for all issues. The Group does not make any recommendations in that regard, but proposes two options for readily accessible pocket guides to basic norms of conduct that apply to all categories.

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I. Introduction

1. In accordance with General Assembly resolution 59/300 of 22 June 2005, in which the Assembly endorsed the recommendations of the Special Committee on Peacekeeping Operations,[1] the Secretary-General established a Group of Legal Experts:

(a) To provide advice on whether, and if so how, the standards in the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) could bind contingent members in the period prior to the conclusion of a memorandum of understanding or other agreement or action by a troop-contributing country that incorporates those standards in a legally effective way under its national laws;

(b) To study and propose ways of standardizing the norms of conduct applicable to all categories of peacekeeping personnel, paying particular attention to the issue of sexual exploitation and abuse.

2. The Group[2] undertook this task, in accordance with its terms of reference (see annex I), between 12 September and 27 October 2006.

3. The Group consulted with a number of officials from the Department of Peacekeeping Operations and the Office of Legal Affairs, and appreciates the time those officials took to provide them with information in relation to peacekeeping operations. The Group also met with the members of the Special Committee on Peacekeeping Operations and thanks them for their time.

4. The Group is grateful for the professional assistance and support provided by the administrative officer for the Group.

II. First term of reference of the Group of Legal Experts

To provide advice to the General Assembly on whether, and if so how, the standards in the Secretary-General's bulletin (ST/SGB/2003/13) could bind contingent members in the period prior to the conclusion of a memorandum of understanding or other agreement or action by a troop-contributing country that incorporates those standards in a legally effective way under its national laws.

Observations on the mandate

5. The mandate of the Group of Legal Experts requests advice on the ways in which the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) (hereinafter "the 2003 bulletin") could bind "members of national contingents assigned to the military component of a United Nations peacekeeping operation". The Group understands this to mean both military and civilian personnel of a national contingent who are

[1] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 19* (A/59/19/Rev.1), part two, chap. II, paras. 40 (b) and (c).

[2] Secretary: Diana Boernstein (United States of America); Members: Oluyemi Osinbajo (Nigeria), Suesan Sellick (Australia), Lionel Yee (Singapore).

provided to the United Nations by the Government of a troop-contributing country for the purposes of a peacekeeping operation, and the generic expressions "contingent members" or "members of national contingents" are used in the present report. The Group notes that this does not include formed police units as they are not assigned to the military component of a United Nations peacekeeping operation.[3] The Group also notes that the standards set out in the 2003 bulletin have been made applicable to other categories of peacekeeping personnel (see para. 40 below).

6. The Group is aware that negotiations are taking place to incorporate relevant provisions of the 2003 bulletin into the memorandum of understanding that governs the participation of a troop-contributing country in a peacekeeping operation. Its mandate requires it to consider the application of the standards in the 2003 bulletin before a memorandum of understanding incorporating the bulletin is signed.

7. The Group understands the expression "bind contingent members" to require it to consider:

(a) The ways in which a troop-contributing country:

(i) May have an obligation in international law to apply the standards set out in the 2003 bulletin to its contingent members; and

(ii) Can take action under domestic law, through its military and/or criminal justice system, against contingent members if they fail to comply with those standards; and

(b) Any other circumstance in which action may be taken against a contingent member if he or she fails to comply with those standards.

8. Finally, the Group notes that although military members of national contingents are under the exclusive jurisdiction of their States in respect of criminal offences committed on a peacekeeping operation,[4] the peacekeeping operation remains the responsibility of the United Nations and, more importantly, the United Nations is responsible for the good conduct of all personnel, including military members of national contingents.[5]

Discussion

9. In addressing the first term of reference, the Group considered the processes involved in the deployment of personnel from a troop-contributing country and identified a number of ways by which a troop-contributing country could be placed

[3] The Group is aware that formed police units are provided by Member States under similar financial terms and conditions as national contingents. Unlike members of national contingents, however, the members of the formed police units have the status of experts on mission and do not come within the exclusive jurisdiction of the sending State. Therefore, the 2003 bulletin applies to members of the formed police units by the terms of their engagement; see para. 42 of the present report.

[4] See para. 40 of the model status-of-forces agreement of 9 October 1990 (A/45/594, annex). The extent of the immunities and privileges of civilian members of a military component is outside the scope of the present report.

[5] See Standard Directives for the Special Representative of the Secretary-General, as discussed in para. 19 of the present report.

under obligation in international law to act so as to ensure that allegations of sexual exploitation and abuse by members of its national contingent can be properly investigated and, if substantiated, punished. The Group also considered the roles of heads of mission, Force Commanders, Security Council resolutions and troop-contributing countries themselves.

10. The Group notes that even if a troop-contributing country is under an international law obligation, the United Nations may still be unable to compel a troop-contributing country to take the necessary action under its domestic law to ensure that members of its national contingent are bound by the 2003 bulletin. It is for each troop-contributing country to act in accordance with its national legal system to ensure that the conduct proscribed by that bulletin is punishable in accordance with its laws.[6] Of course, the ultimate sanction is the United Nations not seeking troops from countries that have not proscribed such conduct. But this may be neither a practical nor a realistic solution.

Force generation and action by the United Nations

11. The Group understands that, before a national contingent is deployed, there is considerable contact between the Department of Peacekeeping Operations and the troop-contributing country. For example, early in the preparation stage, the concept of the operation and organizational structure, as well as information relating to personnel, are set out in the form of Guidelines for Troop-Contributing Countries, which are provided to potential troop-contributing countries.[7]

12. Following the adoption of the Security Council resolution authorizing the peacekeeping operation, a formal invitation is sent by the United Nations to the potential troop-contributing country in the form of a note verbale. Negotiations on the memorandum of understanding are then undertaken with the troop-contributing country, and a predeployment visit may be made by the Department of Peacekeeping Operations to give briefings and to inspect the equipment and the units to be deployed. If there is a predeployment visit, the Department provides a report to the troop-contributing country on the outcome of that visit. Notwithstanding the continued communications and negotiations, it is often the case that the memorandum of understanding will not be signed by the troop-contributing country before deployment, and it may not be signed for some months.

13. At any stage of this process, the United Nations can seek commitments from the troop-contributing country that it will take action against a member of its national contingent who contravenes the standards set out in the 2003 bulletin.

14. This could be done by the note verbale specifically stating that:

(a) The deployment is on the understanding that the troop-contributing country will take such action; or

[6] Whether this be by way of the military and/or criminal justice system.

[7] These Guidelines will eventually be incorporated as annex G to the memorandum of understanding that governs the participation of the troop-contributing country in the peacekeeping operation.

(b) The general administrative arrangements[8] for deployment are contained in the Guidelines for Troop-Contributing Countries. The Guidelines should, in turn, require the troop-contributing country to prohibit sexual exploitation and abuse as set out in the 2003 bulletin.[9]

15. In either case, if the troop-contributing country, without any qualification, deploys a military contingent in response to the note verbale, the deployment will be on the basis of such understanding or arrangements. In these circumstances, the troop-contributing country will be bound in international law to apply the standards set out in the 2003 bulletin to its contingent members.

16. The Group also considered the possible use of a one-off note verbale to all States stating that future deployments will be on the understanding that the troop-contributing country will ensure that members of its national contingent will comply with the standards of conduct set out in the 2003 bulletin. The advantage of this is that it would only need to be done once; the practical and political viability of this approach is doubtful, however. Its open-ended character means that it is possible that, after a certain time, troop-contributing countries may overlook the existence and continued application of its terms.

17. The predeployment visit can also be used to ascertain whether and how the troop-contributing country intends to ensure that its members observe the standards of conduct set out in the 2003 bulletin. While this may not result in the troop-contributing country undertaking binding obligations in international law, the troop-contributing country's attention is drawn to the importance of compliance with the United Nations zero tolerance policy.

18. **The Group recommends that:**

(a) The Department of Peacekeeping Operations consider including in the note verbale one of the following statements:

(i) That the contribution of a national contingent is on the understanding that the troop-contributing country will take action to ensure that its members observe the standards in the 2003 bulletin and will take measures under its national laws to ensure that allegations of sexual exploitation and abuse against its personnel are properly investigated and, if substantiated, punished; or

(ii) That the general administrative arrangements applicable to the contribution are those set out in the Guidelines for the peacekeeping operation, which should require the troop-contributing country to prohibit sexual exploitation and abuse; and

(b) That the predeployment visit (where one occurs) be used to ascertain whether and how the troop-contributing country intends to ensure that its members observe the standards of conduct set out in the 2003 bulletin, with the

[8] The expression "general administrative arrangements" is used to refer to the function of the Guidelines in the model memorandum of understanding (A/51/967 and Corr.1 and 2, annex A (Personnel), para. 10).

[9] While there is some discussion on the status of the Guidelines in the Zeid report (A/59/710, paras. 20 and A.31), under this proposal, the legal obligation is created pursuant to the note verbale and not the Guidelines as such.

outcome of the inquiry recorded in the visit report to be given to the troop-contributing country.

Administrative action by the head of mission

19. In accordance with the Standard Directives issued by the Under-Secretary-General for Peacekeeping Operations to the head of mission/Special Representative of the Secretary-General,[10] the head of mission exercises operational authority[11] in the field on behalf of the Secretary-General. All personnel assigned to the mission are under the authority and direction of the Special Representative, and are answerable to him or her for their conduct and the performance of their duties. In particular, the head of mission must ensure that all members of the mission, among other things:

(a) Conduct themselves at all times (both on and off duty) in a manner befitting their status as members of the mission and that they carry out their duties and regulate their conduct solely with the interest of the United Nations in view;

(b) Refrain from any action incompatible with the international nature of their duties; and

(c) Respect the laws, regulations and customs of the host country, as well as international human rights standards and international humanitarian law, and receive adequate training in this area. In this connection, it is imperative that they demonstrate respect for the local population, in particular vulnerable groups.[12]

20. Based on this authority, the United Nations through the head of mission is able to take and has taken administrative action[13] against contingent members in peacekeeping missions who have engaged in sexual exploitation and abuse. Information provided by the Department of Peacekeeping Operations states that between 1 January 2004 and 23 August 2006, there have been 144 repatriations or rotations of persons on disciplinary grounds, including seven commanders.

21. The Group is aware of one instance of disagreement between the United Nations and the troop-contributing country over whether the facts substantiated the alleged misconduct in a particular case. The Group is unaware, however, of any dispute about the authority of the United Nations to require repatriation in the event that the misconduct is established.

22. The ability of the United Nations to repatriate a member of a national contingent who contravenes the 2003 bulletin indicates that the standards of that

[10] In the absence of a Special Representative, the Force Commander or Chief Military Officer or Chief of Staff serves as head of mission.

[11] "Operational authority" involves the full authority to issue operational directives within the limits of (1) a specific mandate of the Security Council; (2) an agreed period of time; and (3) a specific geographic area.

[12] See para. 30 of the Standard Directives issued to the head of mission. The Special Representative may do so by directives or instructions.

[13] As opposed to disciplinary or criminal action taken by the troop-contributing country. In cases of sexual exploitation and abuse, the administrative action is generally repatriation. For misconduct of a minor nature, such as contravening standards of conduct dealing with driving, the administrative action might be loss of licence or privileges associated with the use of United Nations vehicles.

bulletin do bind such persons regardless of whether a memorandum of understanding is signed, in that there are consequences for contingent members who fail to comply.

Security Council resolutions

23. The Group notes that a number of recent Security Council resolutions authorizing or extending a peacekeeping operation have made express reference to the Secretary-General's zero tolerance policy on sexual exploitation and abuse. Those resolutions have requested the Secretary-General to "take all necessary action" to prevent sexual exploitation and abuse, and have urged troop-contributing countries to take, among other things, disciplinary action to deal with such conduct by their personnel.[14]

24. These resolutions use only exhortative language in relation to troop-contributing countries taking disciplinary action, however. In order to create a legally binding obligation on the part of a troop-contributing country, it would be necessary to invoke the decision-making powers of the Security Council under Chapter VII of the Charter of the United Nations. It is, however, doubtful if such a measure can be described as necessary for restoring or maintaining international peace and security so as to justify invoking the Council's Chapter VII powers.

25. Nevertheless, **the Group recommends retaining, as a minimum, the recent practice of including, in Security Council resolutions authorizing or extending mandates for peacekeeping operations, a call on the Secretary-General to take all necessary action to give effect to the 2003 bulletin**, for the reasons set out in paragraph 29 below.

Directives issued by the head of mission and/or Force Commander

26. In accordance with command and control responsibilities in United Nations peacekeeping missions,[15] the Force Commander exercises operational control over all military personnel in the mission. United Nations operational control gives the Force Commander the authority, inter alia, to direct forces assigned to accomplish specific missions or tasks. In general terms, the Force Commander has the authority to issue directives in relation to matters that impact on the success of the mission.[16]

27. The Group is aware that directives governing the conduct of peacekeeping personnel, including contingent members, are routinely issued by the head of mission and/or the Force Commander. Examples of these are directives establishing

[14] See, for example, Security Council resolution 1626 (2005), which extended the United Nations Mission in Liberia (UNMIL), para. 12; and resolution 1704 (2006), which established the United Nations Integrated Mission in Timor-Leste (UNMIT), para 13.

[15] See Guidelines for the Development of Command Directives for the Force Commander and the Chief Military Observer in United Nations Peacekeeping Operations issued by the Department of Peacekeeping Operations, October 2001.

[16] The Group is of the view that sexual exploitation and abuse can impact on the mission. It taints and undermines the efforts of peacekeeping personnel and arguably falls within the Force Commander's operational control. This is also addressed in the Zeid report (A/59/710, para. 10).

lists of premises and areas that are off-limits to peacekeeping personnel,[17] imposing curfews and requiring contingent members to wear military uniforms when they are off duty.[18] A specific Code of Conduct on Sexual Exploitation and Abuse binding on all peacekeeping personnel was issued by the Special Representative in Liberia.[19] Many of these directives instruct contingent commanders to disseminate them and to ensure compliance by their contingent or unit members. This latter point reflects the fact that the Special Representative and the Force Commander do not have the authority to take disciplinary action to enforce the directives. That remains the exclusive right of the troop-contributing country.[20]

28. The Group is not aware of any objections having been raised to the authority of the head of mission or the Force Commander to issue such directives. The Group understands that contingent commanders have, in turn, issued these directives as orders to contingent members. In such circumstances, it is arguable that United Nations and State practice in the field support the existence of the authority of the head of mission or Force Commander to issue directives binding in international law on military contingents to regulate the conduct of their members, including conduct relating to sexual exploitation and abuse.

29. The authority of the head of mission or Force Commander to do so may be enhanced if the relevant Security Council resolution commits the Secretary-General to take all necessary action to give effect to the 2003 bulletin. Compliance with the standards of conduct set out in the bulletin could then be regarded as an operational matter since it defines the way in which the Council intended the mission to discharge its mandate.

30. The Group notes that the model command directives of the United Nations to Force Commanders include a requirement that the Force Commander ensure that military forces comply with the Secretary-General's bulletin of 6 August 1999 entitled "Observance by United Nations forces of international humanitarian law" (ST/SGB/1999/13). This is a useful precedent to show how an issue of significance to United Nations peacekeeping operations may be brought within the authority of the Force Commander.

31. **To reinforce the importance of the United Nations zero tolerance policy on sexual exploitation and abuse, the Group recommends that:**

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[17] This has been done in the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC); the United Nations Mission in Ethiopia and Eritrea (UNMEE); the United Nations Mission in Liberia (UNMIL); the United Nations Interim Administration Mission in Kosovo (UNMIK); the United Nations Operation in Côte d'Ivoire (UNOCI); and the United Nations Peacekeeping Force in Cyprus (UNFICYP).

[18] See, for example, MONUC Force Commander's Directive 31/05 dated 22 July 2005, which regulates all these matters.

[19] UNMIL Information Circular No. 2006/076 dated 25 April 2006. Codes of conduct which address sexual exploitation and abuse were also issued in the United Nations Integrated Office for Sierra Leone (UNIOSIL); the United Nations Operation in Burundi (ONUB); the United Nations Mission for the Referendum in Western Sahara (MINURSO); and MONUC. Similar codes are likely to exist for all peacekeeping operations.

[20] "The Organization does not discipline or promote individual members of military contingents, functions which remain the purview of their national authorities", see the report of the Secretary-General on command and control of United Nations peacekeeping operations (A/49/681), para. 6.

(a) The Directive to the Force Commander include a specific reference to the need to ensure compliance with the 2003 bulletin (ST/SGB/2003/13), and

(b) Heads of mission and/or Force Commanders issue directives prohibiting the conduct set out in that bulletin and requiring contingent commanders to disseminate those directives and ensure compliance.

Action by a troop-contributing country, contingent commanders and others in the chain of command

32. The Group notes that the General Assembly, in resolution 59/300, endorsed the recommendation of the Special Committee on Peacekeeping Operations[21] that the standards of conduct and behaviour set out in the 2003 bulletin apply to all categories of peacekeeping personnel. The Special Committee re-emphasized this position at its session held in 2006 (see A/60/19, para. 65). It seems to the Group that all troop-contributing countries are in a position to give effect to this recommendation by taking action to prohibit the conduct set out in the 2003 bulletin and to properly investigate and punish an offender. They can do so through formal legislative action by ensuring that where acts prohibited by the Bulletin amount to crimes under their national laws, those laws apply to crimes committed abroad by members of their national contingents.[22]

33. As discussed in the Zeid report (A/59/710, para. 78), the model status-of-forces agreement sets out the requirement for the Secretary-General to obtain assurances from Governments of participating States that they will be prepared to exercise jurisdiction with respect to crimes or offences which may be committed by members of their national contingents serving with the peacekeeping operation.

34. Formal legislative action is not essential, however, for a troop-contributing country to give effect to the 2003 bulletin under domestic law. While the Group has not reviewed the military law of all troop-contributing countries, it is self-evident that military commanders have the power or authority to issue commands that are binding on personnel within the commander's chain of command. Further, commands may be oral or in writing. Obedience to commands, irrespective of form, is an integral part of military discipline. The exercise of the power to issue binding commands and the requirement for obedience to such commands is reinforced in the troop-contributing country's domestic law by its military and/or criminal justice system.[23]

35. The issue of commands is also a mechanism for proscribing conduct that may not be considered criminal but which needs to be prohibited in certain cases. Commands could therefore be issued proscribing the conduct set out in the 2003 bulletin, even if not all the conduct prohibited by the bulletin would attract sanctions under the troop-contributing country's criminal laws.

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[21] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 19* (A/59/19/Rev.1), part two, chap. II, para. 8.

[22] The report of the first Group of Legal Experts (A/60/980) discusses the concept of criminal accountability in relation to United Nations officials and experts on mission.

[23] The extent to which a military justice or disciplinary system is able to take action for conduct that amounts to criminal conduct depends on the nature of the troop-contributing country's constitutional laws and criminal justice system and is outside the scope of the present report.

36. Such commands may be used either to implement the 2003 bulletin or to promulgate the relevant Force Commander's directives. At its simplest, a contingent commander could issue a command that all Force Commander directives are to be obeyed;[24] alternatively, the directives could be reproduced as instructions or orders, or standard operating procedures. Whatever the process involved, the standards are made binding on members of the national contingent and failure to comply with the command (as evidenced by failure to comply with the standards) can be investigated and punished in accordance with the troop-contributing country's military and/or criminal justice system.

37. The use of commands provides a way of making the standards of conduct set out in the 2003 bulletin binding on members of national contingents before a memorandum of understanding is signed. The Group understands that certain troop-contributing countries have in fact taken action under their military and/or criminal justice systems against persons who have engaged in sexual exploitation and abuse. This includes the dismissal from the military, custodial sentences and loss of rank. Such actions have been taken even though the 2003 bulletin has yet to be included in the memorandum of understanding.

38. **The Group recommends that:**

(a) **Troop-contributing countries consider taking formal legislative action to ensure that where acts prohibited by the 2003 bulletin amount to crimes under their national law, those laws apply to crimes committed abroad by members of their national contingent;**

(b) **The Department of Peacekeeping Operations reinstate the practice of receiving assurances from participating States on the exercise of criminal jurisdiction in accordance with the status-of-forces agreement; and**

(c) **Troop-contributing countries ensure that commands have been issued in a manner binding under their military and/or criminal justice system either proscribing the conduct set out in the 2003 bulletin and/or giving effect to the Force Commander's directives that relate to that bulletin.**

III. Second term of reference of the Group of Legal Experts

To study and propose to the General Assembly ways of standardizing the norms of conduct applicable to all categories of peacekeeping personnel, paying particular attention to the norms of conduct on sexual exploitation and abuse.

Observations on the mandate

39. The Group understands that the expression "norms of conduct" is not used in a technical sense. In the present report, "norms of conduct" is used as a generic term

[24] The Group understands that it is highly unlikely that a contingent commander will not give effect to a Force Commander's directive in this way. There is no guarantee, however, that the contingent commander will enforce his or her command, or that there are mechanisms in place to ensure compliance or that an alleged offender will be punished.

to mean all standards of conduct, however described and however imposed, whether by way of the Charter, rules, regulations, directives, contracts or other mechanisms.

40. The Group also understands that at the time the Special Committee issued its request for consideration of this term of reference, it may have been motivated by a concern that all categories of peacekeeping personnel should be subject to the same norms of conduct, particularly in relation to sexual exploitation and abuse. The Group notes that the Zeid report identified as a problem the fact that different components of a peacekeeping operation are governed by different rules and disciplinary procedures because they each have a distinct legal status (A/59/710, para. 14). The 2003 bulletin was directly applicable only to United Nations staff and did not apply of its own force to all components. Since that time, the legal instruments that govern experts on mission, contractors, consultants and United Nations Volunteers have been adjusted to make the 2003 bulletin applicable to those categories.[25]

Discussion

41. The Group approached this term of reference by reviewing instruments that set out norms of conduct for peacekeeping personnel and considering the general nature of those norms (see annex II).

42. As the annex to the Zeid report and annex II to the present report illustrate, norms of conduct are imposed on different categories of peacekeeping personnel by different instruments. They are imposed on United Nations staff members by the Charter of the United Nations and the Staff Regulations and Rules, which incorporate bulletins, instructions and directives; on experts on mission by the terms of their employment; on consultants and contractors by the terms of their contract; on United Nations Volunteers by their Conditions of Service and Rules of Conduct; and on members of national contingents by applicable laws, rules and regulations and by obligations placed on the troop-contributing country through the memorandum of understanding or equivalent document.

43. An analysis of those instruments shows that the same basic norms of conduct are generally applicable to all categories of peacekeeping personnel. For example, all personnel are required not to engage in any activity that is incompatible with the discharge of their duties with the United Nations or that would adversely reflect on the Organization. As the Zeid report notes, "the basic standards of conduct and integrity required of the various categories of peacekeeping personnel — set out in the Staff Regulations and Rules, the Ten Rules and We Are United Nations Peacekeepers — are similar because they are all derived from principles established in Article 101, paragraph 3, of the Charter, which requires the highest standards of integrity of United Nations officials" (A/59/710, para. 21).

44. Where there are differences, they largely result from having mission-specific rules, and specific rules for different categories of peacekeeping personnel that cannot readily apply to other categories. For example, curfews may differ from

[25] The first part of the present report addresses the way in which the 2003 bulletin can be made applicable to members of national contingents before the memorandum of understanding or other document is signed and notes that there are negotiations to amend the model memorandum of understanding.

mission to mission and even for different areas of the mission. Wearing uniforms and the requirement to pay compliments to colleagues and superiors are only relevant to uniformed categories of peacekeeping personnel.

45. The analysis also shows that different categories of peacekeeping personnel are subject to different consequences for failure to comply with those norms of conduct:

(a) United Nations staff members are subject to disciplinary action by the United Nations and may face criminal prosecution;[26]

(b) Experts on mission will be subject to administrative action by the United Nations, usually repatriation, and possible criminal prosecution;

(c) Contractors and consultants will have their contracts terminated and may also face criminal prosecution; and

(d) Members of national contingents may face administrative action by the United Nations, usually repatriation, and may be subject to the military and/or criminal justice systems of their sending State.

Standardizing norms of conduct

46. The Group understands that the idea of uniform and binding standards that apply to all categories of peacekeeping personnel in all situations may seem attractive to exhibit fairness and consistency across the mission. However, as the different categories of peacekeeping personnel serve the United Nations under different terms and conditions and perform different functions, having a single set of norms in relation to all conduct and for all categories of peacekeeping personnel is neither practical nor necessary.[27]

47. Notwithstanding this conclusion, there may be specific issues that are of significance to the United Nations where a common set of norms is justified. For example, issues that are likely to prejudice the operation of a peacekeeping mission and/or adversely impact on the credibility of the United Nations may warrant such treatment. Sexual exploitation and abuse is one such issue. In such cases, **the Group recommends that consideration should continue to be given to applying the same norms of conduct to all categories of peacekeeping personnel in relation to those significant issues.** If there is a need to do so, there are existing mechanisms by which this can be achieved (see para. 42 above).

Standardizing specific documents

48. As paragraph 43 above notes, all categories of peacekeeping personnel are subject to essentially the same basic norms of conduct.

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[26] For all categories, criminal prosecution will depend on whether the conduct amounts to a criminal offence in the host State or another State with jurisdiction over the alleged offender and the waiver of any applicable immunity.

[27] The Group notes that standardizing norms of conduct would not result in standardizing disciplinary regimes or sanctions.

49. Some of those basic norms are currently set out in a convenient form for military personnel in the two pocket guides "We Are United Nations Peacekeepers" and "Ten Rules: Code of Personal Conduct for Blue Helmets" (Ten Rules). There is no convenient guide, however, that summarizes the basic norms for all categories of peacekeeping personnel.

50. The Group considers that there is merit in having such a guide. First, it would give prominence to important norms of conduct required of all peacekeeping personnel. Secondly, it would reinforce the fact that peacekeeping personnel, whether civilian or non-civilian, are part of a common enterprise. Thirdly, it would result in a handy guide that sets out basic norms applicable to all categories of peacekeeping personnel.[28] Finally, if the document can be issued as a Secretary-General's bulletin, it would have certainty of status, which the "We Are United Nations Peacekeepers" and the Ten Rules lack.[29]

51. The document should be readily accessible to all peacekeeping personnel, be written in clear, unambiguous language and be translated into all relevant languages.

52. The Group identifies two options for a document that sets out the basic norms of conduct for all categories of peacekeeping personnel.

First option — making "We Are United Nations Peacekeepers" applicable to all categories of peacekeeping personnel

53. The simplest way of generating such a guide is to make minor amendments to "We Are United Nations Peacekeepers" to make it applicable to all categories of peacekeeping personnel. This achieves the objectives set out in paragraph 50 above with minimum changes to an existing document.

54. An indicative draft of a document entitled "We Are United Nations Peacekeeping Personnel" is contained in annex III to the present report. This document is based on the existing document with recommended changes highlighted and could be issued as a pocket guide to all categories of peacekeeping personnel.

55. The Group understands that "We Are United Nations Peacekeepers" has acquired considerable acceptance in the field, is familiar to troop-contributing countries and forms the basis of training conducted by the Department of Peacekeeping Operations. While the Group has amended "We Are United Nations Peacekeepers" to incorporate the principles underlying the 2003 bulletin and made minor textual changes, it is of the view that more substantive amendments to the content of the guide are matters of policy.

Second option — a new document

56. The second option is to develop a new guide that sets out the basic norms of conduct that are currently common to all categories of peacekeeping personnel. This

[28] The basic norms themselves are not new but there may be minor differences in the way each is expressed.

[29] The advantage of a Secretary-General's bulletin is that it could apply to United Nations personnel who are not assigned to the peacekeeping operation but who are working in the mission area.

document would replace "We Are United Nations Peacekeepers" and the Ten Rules. Annex IV sets out an indicative draft of such a guide that is drawn from instruments that already apply and bind peacekeeping personnel (see annex II).

57. As with the first option, the document proposed at annex IV achieves the objectives set out in paragraph 50 above and provides non-military, as well as military, peacekeeping personnel with a readily accessible pocket guide. It incorporates the principles of the 2003 bulletin and overcomes some ambiguities in the language of existing documents.

58. As the guide has been generated from norms of conduct which apply to all categories, it does not contain norms that are applicable only to specific categories of peacekeeping personnel. For example, the requirements relating to behaviour as a soldier, the treatment of detainees and the observance of military courtesy, which apply primarily to the military and are contained in the Ten Rules, have been excluded. Also excluded has been the express prohibition in the Staff Regulations against engaging in any outside occupation or employment, which is not included in the standard conditions of contract for individual contractors (ST/AI/1999/97).

59. If there are, however, norms of conduct that have been omitted from the guide and are important to a particular category of personnel, there are existing mechanisms to make those norms applicable to the relevant category. For example, the Ten Rules could be retained if they are regarded as sufficiently important to the conduct of military personnel as to require that they be expressly highlighted to military personnel in a pocket guide.

Conclusion

60. Notwithstanding the practical difficulty of standardizing norms of conduct for all issues, it is possible to produce a guide that sets out the basic norms of conduct applicable to all peacekeeping personnel. Two options for doing so have been identified. Each option has the effect of standardizing the conduct proscribed by the 2003 bulletin. The decision as to whether either option is pursued and what should or should not be included in such a document, however, are matters of policy which need to be addressed by the Department of Peacekeeping Operations in consultation with relevant stakeholders.

Annex I

Terms of reference of the Group of Legal Experts

To advise on making the standards contained in the Secretary-General's bulletin binding on contingent members and standardizing the norms of conduct so that they are applicable to all categories of peacekeeping personnel

Constitution and composition

Pursuant to General Assembly resolution 59/300 of 22 June 2005, a Group of Experts shall be established:

(a) To provide advice to the General Assembly on whether, and if so how, the standards in the Secretary-General's bulletin (ST/SGB/2003/13) could bind contingent members in the period prior to the conclusion of a memorandum of understanding or other agreement or other action by a troop-contributing country that incorporates those standards in a legally effective way under its national law; and

(b) To study and propose to the General Assembly ways of standardizing the norms of conduct applicable to all categories of peacekeeping personnel, paying particular attention to the issue of sexual exploitation and abuse.

The Group of Experts shall be composed of three legal experts and one secretary, who together shall have expertise in public international law, military law, police law, United Nations peacekeeping law and practice and the personnel law of the United Nations.

Mandate

To study and provide advice to the General Assembly on whether, and if so how, the standards in the Secretary-General's bulletin on special measures for protection from sexual exploitation and abuse (ST/SGB/2003/13) could be made binding on members of national contingents assigned to the military component of a United Nations peacekeeping operation prior to the conclusion of a memorandum of understanding or other agreement between the United Nations and the troop-contributing country concerned or prior to any other action by the troop-contributing country that has the effect of incorporating those standards in a legally effective way as part of its national law.

To study and propose to the General Assembly ways of standardizing the norms of conduct applicable to all categories of peacekeeping personnel, paying particular attention to norms of conduct on sexual exploitation and abuse.

Report

The Group of Experts shall submit a report of its findings and recommendations to the Secretary-General by January 2007, who will submit the findings and recommendations to the General Assembly at its sixty-first session.

Secretariat

The Group of Experts shall be assisted by a Secretary and such other staff as may be necessary.

The Group of Experts shall also have at their disposal representatives of the United Nations Department of Peacekeeping Operations and the United Nations Office of Legal Affairs to ensure that the Group properly takes account of United Nations peacekeeping law and practice. It shall further have at its disposal representatives of the Human Resources Policy Service of the United Nations Office of Human Resources Management to clarify any matters concerning the United Nations Staff Regulations and Rules, as necessary.

Location and time frame

The Group of Experts shall be based in New York, and shall complete its work within 10 weeks of the start of the project.

Annex II

Standards of conduct for United Nations peacekeeping personnel

United Nations staff

1. All United Nations staff are appointed by the Secretary-General under Article 101, paragraph 1, of the Charter of the United Nations, under regulations promulgated by the General Assembly. Paragraph 3 of the same article requires that the staff be persons of the "highest standards of integrity". Article 100 requires both the Secretary-General and the staff to "refrain from any action which might reflect on their position as international officials responsible only to the Organization".

2. The Staff Regulations, most of which are broad imperatives, "embody the fundamental conditions of service and the basic rights, duties and obligations of the United Nations Secretariat". By signing their Letter of Appointment, United Nations staff agree to be bound by the Staff Regulations issued by the General Assembly, and the more detailed Staff Rules, issued by the Secretary-General pursuant to the Staff Regulations. The Staff Rules are augmented by the Secretary-General's bulletins, and by administrative instructions or personnel directives issued by senior officers to whom the Secretary-General has delegated authority. References to the Staff Regulations and Rules in contracts and other official documents are deemed to include all explanatory bulletins, instructions and directives. Thus the detailed provisions of 2003 bulletin constitute conditions of employment for United Nations staff, and for the staff of separately administered organs and programmes of the United Nations, who serve on secondment to the Department of Peacekeeping Operations when they go on peacekeeping missions.

3. Article 1 of the Staff Regulations sets out the basic rights and obligations of staff members, which include, inter alia, the obligation to uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, the obligation not to discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them. They are required to conduct themselves at all times in a manner befitting their status as international civil servants and not to engage in any activity that may adversely reflect on their status.

4. United Nations staff are required to follow the directions and instructions properly issued by the Secretary-General and their supervisors. They are required to comply with local laws and honour their private legal obligations, including the obligation to honour orders of competent courts. Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse at the workplace or in connection with work, is prohibited. The "Standards of conduct for the international civil service"[a] does not have the force of law but has been continually cited by successive Secretaries-General and by the United Nations Administrative Tribunal in assessing the conduct of staff. Many of the provisions of article 1 of the Staff Regulations are drawn from the Standards, which also require

[a] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 30* (A/56/30), annex II.

that staff bear in mind that their conduct and activities outside the workplace, even if unrelated to official duties, can compromise the image and the interests of the Organization.

Experts on mission — including United Nations police and military observers

5. On appointment, United Nations police and military observers sign an undertaking in which they agree to comply with all mission standard operating and administrative procedures, directives, and other issuances, including the "Ten Rules: Code of Conduct for Blue Helmets" and the "We Are United Nations Peacekeepers". This undertaking has been amended to include the standards of the 2003 bulletin (A/60/19, para. 65). Additionally, guidelines for both United Nations police and military observers are distributed, with detailed provisions on conduct, including a prohibition on abuse or exploitation of the local population, particularly women and children, and a requirement to show respect and courtesy towards all (A/59/710, paras. A.18-A.20).

6. United Nations police and military observers are not United Nations officials, as defined in the Charter and the Staff Rules. The model status-of-forces agreement (A/45/594, annex), which forms the basis for the negotiations between the United Nations and the host country, confers on these individuals the status of experts on mission under the Convention on the Privileges and Immunities of the United Nations.[b] The General Assembly, in its resolution 56/280 of 27 March 2002, adopted a set of Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission. This document, which was promulgated by the Secretary-General in June 2002 as a Secretary-General's bulletin (ST/SGB/2002/9), sets out standards of conduct which largely repeat the basic values set out in paragraphs 2 and 3 in the present annex, particularly the requirement to uphold the highest standards of integrity, to regulate their conduct with the interests of the Organization only in view, to conduct themselves at all times in a manner befitting their status, and to comply with local laws. Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse, is prohibited. The Regulations form part of the contract of employment or terms of appointment of experts on mission. A copy is attached to the documentation from the United Nations regarding their mission, and the experts are required to acknowledge receipt of the Regulations.

Contractors and consultants

7. Contractors are retained under standard conditions of contract specified in administrative instruction ST/AI/1999/7. This instruction prohibits the contractor taking any action that may adversely affect the interests of the United Nations, and requires him/her to perform obligations under the contract with the fullest regard to the interest of the United Nations.

8. This administrative instruction was amended in March 2006 (ST/AI/1999/7/Amend.1) to include a requirement that contractors not engage in

[b] United Nations, *Treaty Series*, vol. I, No. 4.

any conduct prohibited by the 2003 bulletin. The contractor must agree that any breach of the prohibition against sexual exploitation and abuse will constitute a breach of an essential term of the contract, and will constitute grounds for termination of the contract, and that the United Nations reserves the right to refer any breach of this standard to the relevant national authorities for appropriate legal action.

9. Consultants are individuals with special skills that are not readily available in the Secretariat. They may perform functions similar to staff members but for short periods of time. Consultants are regarded as individual contractors and have the status of neither staff nor experts on mission unless they are required by the Organization to travel, in which case they may be accorded expert on mission status. Under the revised administrative instruction, consultants are subject to the same Standards of Conduct as contractors, and in their contract with the Organization, they are required to acknowledge that the General Conditions of Contract form an integral part of their contract and that they have read, understood, and agree to abide by the 2003 bulletin.

United Nations Volunteers

10. United Nations Volunteers are not staff or officials, and their status under the Convention on the Privileges and Immunities of the United Nations is subject to negotiated agreements with the host countries. Recent status-of-forces agreements grant them the status of officials.[c] They serve under a separate set of rules, the United Nations Volunteer Conditions of Service and Rules of Conduct, which has been revised to include a paragraph forbidding any form of discrimination or harassment, including requests for sexual favours, or gender harassment, and prohibiting sexual exploitation and abuse. The Conditions of Service contain the general requirement to regulate their conduct in the interest of the United Nations, and the prohibition against any activity incompatible with the proper discharge of their duties. The Conditions of Service[d] have been revised to ensure that they are bound by the specific prohibitions of the 2003 bulletin as a condition of their assignment.

Members of national contingents

11. Military members of national contingents are subject to the exclusive jurisdiction of their sending State for the purposes of the exercise of disciplinary and/or criminal jurisdiction in relation to crimes that are committed on peacekeeping operations. Notwithstanding, their codes of conduct may be prescribed by the United Nations (in the exercise of operational authority and/or operational control) as well as by the rules and regulations of the sending State. Although the 2003 bulletin does not apply directly to contingent members, the first

[c] See, for example, the Agreement between Liberia and the United Nations concerning the Status of the United Nations Mission in Liberia, para. 27, and the Agreement between the United Nations and the Government of Haiti concerning the Status of the United Nations Stabilization Mission in Haiti, para. 27.

[d] See revised appendix XVII to the Conditions of Service for International United Nations Volunteers.

part of the present report sets out how the standards in the 2003 bulletin can be made to apply to members of national contingents in the period before a memorandum of understanding is signed and also notes that negotiations are currently ongoing to incorporate the 2003 bulletin into the model memorandum of understanding or equivalent document.

Annex III

We Are United Nations Peacekeeping Personnel

The United Nations Organization embodies the aspirations of all the people of the world for peace.

In this context the United Nations Charter requires that all personnel must maintain the highest standards of integrity and conduct.

We will comply with the Guidelines on International Humanitarian Law for Forces Undertaking United Nations Peacekeeping Operations and the applicable portions of the Universal Declaration of Human Rights as the fundamental basis of our standards.

We, as peacekeeping personnel, represent the United Nations and are present in the country to help it recover from the trauma of a conflict. As a result we must consciously be prepared to accept special constraints in our public and private lives in order to do the work and to pursue the ideals of the United Nations Organization.

We will be accorded certain privileges and immunities arranged through agreements negotiated between the United Nations and the host country solely for the purpose of discharging our peacekeeping duties. Expectations of the world community and the local population will be high and our actions, behaviour and speech will be closely monitored.

We will always:

- Conduct ourselves in a professional and disciplined manner, at all times;
- Dedicate ourselves to achieving the goals of the United Nations;
- Understand the mandate and mission and comply with their provisions;
- Respect the environment of the host country;
- Respect local laws, customs and practices and be aware of and respect culture, religion, traditions and gender issues;
- Treat the inhabitants of the host country with respect, courtesy and consideration;
- Act with impartiality, integrity and tact;
- Support and aid the infirm, sick and weak;
- Obey our United Nations superiors/supervisors and respect the chain of command;
- Respect all other peacekeeping members of the mission regardless of status, rank, ethnic or national origin, race, gender, or creed;
- Support and encourage proper conduct among our fellow peacekeeping personnel;
- Report all acts involving sexual exploitation and abuse;
- Maintain proper dress and personal deportment at all times;

- Properly account for all money and property assigned to us as members of the mission; and
- Care for all United Nations equipment placed in our charge.

We will never:

- Bring discredit upon the United Nations, or our nations through improper personal conduct, failure to perform our duties or abuse of our positions as peacekeeping personnel;
- Take any action that might jeopardize the mission;
- Abuse alcohol, use or traffic in drugs;
- Make unauthorized communications to external agencies, including unauthorized press statements;
- Improperly disclose or use information gained through our employment;
- Use unnecessary violence or threaten anyone in custody;
- Commit any act that could result in physical, sexual or psychological harm or suffering to members of the local population, especially women and children;
- Commit any act involving sexual exploitation and abuse, sexual activity with children under 18, or exchange of money, employment, goods or services for sex;
- Become involved in sexual liaisons which could affect our impartiality, or the well-being of others;
- Be abusive or uncivil to any member of the public;
- Wilfully damage or misuse any United Nations property or equipment;
- Use a vehicle improperly or without authorization;
- Collect unauthorized souvenirs;
- Participate in any illegal activities, corrupt or improper practices; or
- Attempt to use our positions for personal advantage, to make false claims or accept benefits to which we are not entitled.

We realize that the consequences of failure to act within these guidelines may:

- Erode confidence and trust in the United Nations;
- Jeopardize the achievement of the mission;
- Jeopardize our status and security as peacekeeping personnel; and
- Result in administrative, disciplinary or criminal action.

Annex IV

Code of Personal Conduct for United Nations Peacekeeping Personnel

1. Conduct yourself at all times in such a way as to bring credit and respect to the United Nations and the principles for which it stands, which include faith in fundamental human rights, the dignity and worth of the human person, and equal rights for men and women. Do not engage in activity that is incompatible with the discharge of your duties. Discharge your duties in a professional and disciplined manner.

2. Maintain the highest standards of integrity in your professional and personal life. Integrity encompasses such qualities as honesty, fairness, truthfulness, impartiality and incorruptibility.

3. Comply with the laws of the host country; respect the local traditions, customs, religion, culture and the environment; and honour your private obligations, including orders of competent courts.

4. Do not solicit, give or receive any favour, gift or material reward from any outside source, including the people of the host country, in connection with the performance of your duties.

5. Do not seek or receive instructions in regard to the performance of your duties from any source external to the mission.

6. Treat your colleagues with courtesy and consideration, regardless of status, ethnic or national origin, race, gender or creed. Treat the local inhabitants with respect. Protect and support vulnerable populations, especially women and children.

7. The following acts, among others, are prohibited: cruel, humiliating or degrading treatment; rape; sexual assault; exchange of money, employment, goods or services for sex; trafficking in persons; sexual activity with children under 18; theft; smuggling; fraud; any illegal, corrupt or improper practices; abuse of alcohol; abuse of or trafficking in drugs; and any form of discrimination or sexual harassment.

8. Take proper care of United Nations vehicles, property, and equipment, and use these only for authorized purposes. Properly account for all United Nations money and assets.

9. Use the utmost discretion in handling confidential information and matters of official business. Do not communicate information known to you by reason of your official position to any external person or entity unless authorized to do so.

10. Obey your United Nations supervisors and your superior officers. Ensure that these rules are observed by those under your supervision.